



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Simon Walker et al.

Serial No.: 10/541,487

Filed on: July 7, 2005

For: SCREW-IN POST SUPPORT

Confirmation No.: NYA

Group Art Unit No.: NYA

Examiner: NYA

Mail Stop Petition
Commissioner for Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

PETITION TO ACCEPT APPLICATION UNDER 37 C.F.R. §1.47(a)

10/13/2005 GFREY1 00000135 10541487

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Applicants and Peak Innovations Inc., which is assignee hereunder, hereby petition the Commissioner to accept this application on behalf of fewer than all the named inventors, under 35 U.S.C. §116, second paragraph, and 37 C.F.R. §1.47(a)

1. **Fee.** The fee of \$200.00 as required by 37 C.F.R. §1.47(a), 1.17(g) is enclosed.

2. **Last Known Address.** In compliance with 37 C.F.R. §1.47(a) and MPEP 409.03(a)(C), the last known address of the non-signing inventor is:

Mr. Jenkin Suen

Residential: 8795 Saunders Road, Richmond, British Columbia, V7A 2A6,
Canada

3. **Pertinent Facts.** I, the undersigned, am an agent of record in this application and agent-in-fact for Peak Innovations Inc., whose full postal address is Suite 203-11782 Hammersmith Way, Richmond, British Columbia, V7A 5E2, Canada and for Simon

Walker, whose full postal address is 4826 13th Avenue, Delta, British Columbia, V4M 2B8, Canada. I make the following declaration of pertinent facts in support of this petition.

One inventor in this application, Mr. Jenkin Suen, refuses to join in the application. All the available inventors in this application have made declaration on their own behalf as required by 37 C.F.R. §1.63. All the available inventors have made declaration on behalf of the non-signing joint inventors as required by 37 C.F.R. §1.64, by providing a declaration that is signed by all the available joint inventors with the signature block of the non-signing inventors left blank. See MPEP 409.03(a)(A).

This application or petition is accompanied by the following proof that the nonsigning inventors cannot be found or reached after diligent effort or refuse to execute the application papers. See MPEP 409.03(a)(B).

Peak Innovations Inc. ("Peak") filed International Application Number PCT/CA2003/000021 on January 8, 2003. All the named inventors are employees of Peak, or have been in the past. Mr. Jenkin Suen is not presently an employee of Peak having ceased his employment with Peak on February 14, 2003.

Between August 25, 2003 and October 10, 2004, Mr. Clinton Lee, General Counsel (Intellectual Property) of Peak, made numerous attempts to contact Mr. Suen as detailed in his Affidavit sworn November 10, 2004. A copy of the Affidavit is attached at Tab 1.

As set out in the Affidavit, Mr. Lee advised Mr. Suen that Peak had entered the National Phase in Canada and would need his signature on an assignment document. By email dated October 10, 2004, Mr. Suen refused to cooperate.

On July 8, 2005, I contacted Mr. Suen via his last known email address (jenkinsuen@netvigator.com) to inform him that the deadline to enter the National Phase in the United States had passed and that Peak required a Declaration and Assignment to be executed by him for filing purposes. Copies of the documents to be reviewed and signed were attached to the email. A copy of my July 8, 2005 email and the attachments thereto is attached at Tab 2.

On July 9, 2005 I received an email receipt from Mr. Suen indicating that my July 8, 2005 email had been displayed on the recipient's computer. A copy of the July 9, 2005 email is attached at Tab 3.

On July 9, 2005 I received a voicemail message from Mr. Suen. I retrieved the voicemail on July 11, 2005. In his message, Mr. Suen indicated that he had received the materials provided to him with my email and that he was going to seek legal advice. He also indicated that if I had any questions I could email him

On August 18, 2005, I contacted Mr. Suen via his email address. In my email, I requested that he attend to signing the Declaration, Power of Attorney and Assignment documents and return them to me for filing in association with the U.S. Patent Application for the SCREW-IN POST SUPPORT. A copy of my August 18, 2005 email is attached at Tab 4.

On August 24, 2005, I forwarded a copy of my August 18, 2005 email to Mr. Suen at his email address. A copy of my August 24, 2005 email is attached at Tab 5.

To date I have received no further contact from Mr. Suen and respectfully submit that Mr. Suen's refusal to cooperate satisfies the requirements of MPEP 409.03(d) pertaining to inventors who refuse to join an application.

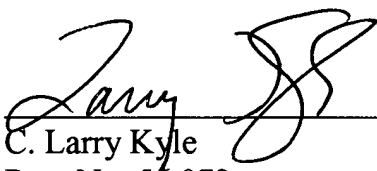
The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

The Applicants and Peak Innovations Inc., respectfully request the Commissioner to grant this petition.

Respectfully submitted,

PAUL SMITH INTELLECTUAL
PROPERTY LAW

Dated: August 31, 2005


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